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1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE EASTERN DISTRICT OF VIRGINIA

3 Richmond Division

4 -----x

5 ePLUS INC., )

6 Plaintiff, ) Civil Action No.

7 v. ) 3:09-CV-620 (REP)

8 LAWSON SOFTWARE, INC., )

9 Defendant. )

10 -----x

11

12 CONFIDENTIAL - SOURCE CODE

13

14 Videotaped Deposition of ALFRED C. WEAVER, Ph.D.

15 Washington, DC

16 Thursday, February 9, 2012

17 9:01 a.m.

18

19

20 Job No.: 17905

21 Pages: 1 - 274

22 Reported by: Lee Bursten, RPR, CRR

EXHIBIT

tables

7

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1	for a legal conclusion.
2	A       Reading the top of column 14, it says,
3	"that the patentee previously contended, and proved,
4	satisfy specific limitations."
5	BY MR. THOMASCH:
6	Q       So it's that which fills both, it was
7	contended by the party, and proven to the jury; is
8	that correct?
9	A       I think so.
10	Q       And in determining what was contended by
11	the party, did you ever inquire about what was said
12	during closing arguments?
13	A       No.
14	Q       Do you know whether ePlus made any
15	contentions to the jury about what was infringing
16	based on ePlus's counsel's cross-examination of
17	Lawson's infringement witness?
18	A       Goodness. I'm not sure what that means.
19	Q       All right. Let me rephrase it. There was
20	at least one other witness at the trial directly
21	related to infringement, correct?
22	A       You're talking about Lawson's witness?

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1 MS. ALBERT: I'm entitled to make 12:03:43  
2 appropriate objections. And he has answered that 12:03:45  
3 question three times now. 12:03:47

4 MR. THOMASCH: Would you read the pending 12:03:48  
5 question back, please. 12:03:50

6 (Requested portion of record read.) 12:03:51

7 A I can form an infringement opinion based 12:04:02  
8 upon the data that I see displayed in the Shopping 12:04:04  
9 Cart and my knowledge of the data structure 12:04:10  
10 underneath it. 12:04:12

11 BY MR. THOMASCH: 12:04:26

12 Q At the time you testified at the trial of 12:04:27  
13 this action, what was your knowledge regarding the 12:04:28  
14 data structure underneath the Shopping Cart? 12:04:32

15 MS. ALBERT: Asked and answered. 12:04:39

16 A That there was a cache that held the data 12:04:39  
17 being displayed in the Shopping Cart. 12:04:44

18 BY MR. THOMASCH: 12:04:45

19 Q And can you be specific as to what you 12:04:45  
20 understood the structure to be that you described as 12:04:47  
21 a cache? 12:04:49

22 A I just described it as a cache because I 12:04:49

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1	knew it had to be there.	12:04:53
2	Q I understand. I'm not asking you how you	12:04:54
3	described it. I'm asking you about your knowledge of	12:04:55
4	it.	12:04:57
5	A My knowledge was that it had to be there.	12:04:58
6	Q Did you know what it was called?	12:05:01
7	A I did not know at that time the name	12:05:04
8	Shopping Cart Cookie file.	12:05:12
9	Q Had you ever heard that phrase?	12:05:12
10	A Not at the time of trial.	12:05:13
11	Q Was the data reflected on the right side of	12:05:30
12	the screen, as you testified to the jury about the	12:05:34
13	Shopping Cart feature, was that maintained in more	12:05:41
14	than one place behind the user interface?	12:05:46
15	A Well, it could have been, depending upon	12:05:54
16	what actions the user took.	12:06:06
17	Q If the user operated a search and made a	12:06:09
18	selection from the search, would that item show up in	12:06:16
19	the My Cart feature on the right side of the screen?	12:06:25
20	A Yes.	12:06:27
21	Q When it did, would it be also held in any	12:06:29
22	data structure behind the screen?	12:06:36

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1	factually a difference.	12:13:42
2	A        Factually, it's for an error-free -- for a	12:13:43
3	single error-free item, RSS stores the data in two	12:13:46
4	data structures. RQC stores it in three. But again,	12:13:50
5	it makes no difference.	12:13:55
6	Q        Did you discuss in your testimony at the	12:13:56
7	first trial how errors were processed in RSS?	12:14:01
8	A        No.	12:14:06
9	Q        Did you make any distinction for purposes	12:14:12
10	of your opinions at the first trial that the	12:14:16
11	infringing configurations infringed claim 1 of the	12:14:24
12	'172 patent between the way search items without	12:14:26
13	error and search items with error were processed?	12:14:35
14	A        I think our demonstrations were error-free.	12:14:39
15	Q        So there was no contention that the manner	12:14:54
16	in which RSS functioned in the context of an error	12:14:56
17	was contended to be infringement?	12:15:05
18	MS. ALBERT: I object to the form.	12:15:09
19	Ambiguous.	12:15:12
20	A        I did not have an example of -- I did not	12:15:14
21	do a demonstration of selecting and adding an item	12:15:17
22	with an error.	12:15:23

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1	BY MR. THOMASCH:	12:15:23
2	Q You went through a number of demonstrations	12:15:23
3	that were intended to show the jury how using the	12:15:26
4	system would read on the claims, claim 1 of the '172	12:15:29
5	patent and would be infringing, correct?	12:15:35
6	A Correct.	12:15:37
7	Q And in those demonstrations, the selected	12:15:37
8	items were error-free, correct?	12:15:41
9	A They were.	12:15:42
10	Q And in that error-free context, you said	12:15:43
11	the jury could find everything it needed to find in	12:15:48
12	order to find infringement of claim 1 of the '172	12:15:51
13	patent, correct?	12:15:54
14	A Yes.	12:15:54
15	Q And in doing so, you didn't reference the	12:15:54
16	cookie server file, correct?	12:15:59
17	A You're talking about the Shopping Cart	12:16:01
18	Cookie file? The one that's on the server side?	12:16:06
19	Q Yes.	12:16:14
20	A Yes.	12:16:14
21	Q Did you reference that by name?	12:16:15
22	A Not by name.	12:16:17

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1	Q     What you knew was that by your knowledge as	12:16:24
2	a computer scientist, you knew that if there was	12:16:28
3	something in the My Cart user interface, there needed	12:16:31
4	to be a data structure behind it, correct?	12:16:36
5	A     I did know that.	12:16:38
6	Q     But you didn't know how many such	12:16:39
7	structures or precisely what they were called,	12:16:42
8	correct?	12:16:44
9	A     Not precisely. I called it a cache, which	12:16:44
10	is what it is.	12:16:47
11	Q     Would that same description apply to the	12:16:49
12	other data structures?	12:16:52
13	A     Which description?	12:16:57
14	Q     Cache. Could cache be used for any one of	12:16:58
15	the data structures you've identified?	12:17:04
16	A     No.	12:17:06
17	Q     Which one would not be considered to be a	12:17:06
18	cache in your view?	12:17:09
19	A     The database.	12:17:10
20	Q     Would the two data structures that exist	12:17:11
21	prior to the Save function both be fairly described	12:17:15
22	as a cache?	12:17:18

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1	Q	How would you explain it?
2	A	So in RSS, when the user clicked "Save,"
3		the contents of the cookie file as reflected also in
4		the Cart Object would be written down into the
5		Requisition Database. In RQC, there is no "Save"
6		button.
7	Q	In RQC, when do selected items make their
8		way into the Requisition Database?
9	A	Selected item, as in an Add, goes first to
10		the Shopping Cart Cookie file. If it is error-free,
11		it's written into the Requisitions Database, marked
12		as an unreleased state, and as a server-client
13		interaction, the Load function causes the Cart Object
14		in JavaScript to be loaded from the Shopping Cart
15		Cookie file and displayed on the right-hand side of
16		the screen.
17		How about a break?
18	Q	Sure.
19	A	Thank you.
20		THE VIDEOGRAPHER: Going off the record at
21		12:35 p.m.
22		(Whereupon, at 12:35 p.m., a lunch recess

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1	Q	And is it fair to say that you don't know
2		whether they were rendering that based on their
3		finding that Item Master had been proven to infringe,
4		Punchout had been proven to infringe, or both?
5	A	I don't know what they were thinking.
6	Q	They found one of those three, correct?
7	A	I guess.
8	Q	Assuming that they had a basis for their
9		verdict. Wouldn't that be right?
10	A	Let's give them some credit, right?
11	Q	I'm always prepared to credit a jury. So
12		they could have found Item Master did it consistent
13		with your testimony, correct?
14	A	Yes.
15	Q	And they could have found that Punchout
16		fulfilled the maintaining at least two product
17		catalogs element of claim 28 in rendering their
18		verdict on configuration number 3, correct?
19	A	Correct.
20	Q	And they could have found that both did,
21		correct?
22	A	Yes.

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1	Master or found Punchout to infringe, you only know	14:09:36
2	they found at least one of them; is that correct?	14:09:40
3	A For claim 3?	14:09:42
4	Q For claim 3.	14:09:43
5	A So you switched claims.	14:09:46
6	Q I'm sorry. I'm sorry. That is my fault.	14:09:48
7	The '683 patent, claim 28.	14:09:51
8	A Right. Again --	14:09:55
9	Q In that regard, I think you've established	14:09:57
10	that you don't know what they found to find	14:09:59
11	configuration 3 infringing of the element of claim 28	14:10:04
12	that relates to catalogs, correct?	14:10:09
13	A Correct.	14:10:12
14	Q Now, do you understand that in doing the	14:10:21
15	Tivo analysis, the Federal Circuit requires one to	14:10:25
16	identify the modified features and focus the analysis	14:10:31
17	on the modified features?	14:10:35
18	MS. ALBERT: Asked and answered four times.	14:10:36
19	A Yes.	14:10:40
20	BY MR. THOMASCH:	14:10:44
21	Q And then the first thing that's done is	14:10:44
22	determine whether they were changed, correct?	14:10:48

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1	So the UNSPSC code would qualify as a	16:25:26
2	non-catalog database identifying cross-referenced	16:25:32
3	items.	16:25:35
4	Q And it actually says, "identifying	16:25:36
5	cross-referenced items, identical items, or generally	16:25:39
6	equivalent items;". Is that right?	16:25:43
7	A Right. And notice those are connected with	16:25:46
8	an "or."	16:25:49
9	Q I do. I just want for the sake of	16:25:50
10	completeness, your point, if I understand it, is that	16:25:52
11	drilling down to the third level in the category	16:25:56
12	search in RQC satisfies this claim element because	16:26:02
13	the product of the search at that level will identify	16:26:11
14	cross-referenced items, correct?	16:26:16
15	A Correct.	16:26:18
16	Q You are not saying that they identify	16:26:20
17	identical items, correct?	16:26:23
18	A I am not saying that.	16:26:25
19	Q And you're not stating that the product	16:26:26
20	will be all generally equivalent items?	16:26:28
21	A I am not stating that.	16:26:29
22	Q But they are cross-referenced, in your	16:26:31

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1	mind?	16:26:33
2	A Yes. And these are two more examples in	16:26:33
3	this same paragraph.	16:26:39
4	Q But is it the cross-referencing capability	16:26:41
5	in each case that --	16:26:44
6	A It is.	16:26:45
7	Q -- you're using to satisfy the converting	16:26:46
8	step?	16:26:48
9	A Yes, it is.	16:26:48
10	Q That's all I need. To what extent did you	16:26:49
11	review the source code relating to the Punchout	16:27:06
12	application?	16:27:11
13	A Insofar as it was described in	16:27:13
14	Mr. Niemeyer's report.	16:27:17
15	Q Is it your recollection that his report	16:27:27
16	actually displayed some of the source code and you	16:27:29
17	reviewed that source code display?	16:27:32
18	A Was it source code, or was it his	16:27:36
19	description of the source code?	16:27:38
20	Q That is actually what I'm asking you.	16:27:42
21	A Yes. Hmm. I think it was his description	16:27:43
22	of the source code.	16:27:49

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1	the '172 patent, claim 1; is that correct?	17:04:07
2	A      Correct.	17:04:11
3	Q      And did both of them serve as a potential	17:04:13
4	basis for arguing infringement under '172 patent,	17:04:26
5	claim 1, of RSS?	17:04:32
6	A      Yes.	17:04:35
7	Q      Did the Cart Object, as used in RSS, change	17:04:38
8	in RQC?	17:04:46
9	A      No.	17:04:47
10	Q      Did the Shopping Cart Cookie file in RSS	17:04:48
11	change in RQC?	17:04:55
12	A      The file didn't change. But the operation	17:04:56
13	occurs in -- let me think about that. No. The	17:05:01
14	Shopping Cart server -- I can say this, I know I can.	17:05:29
15	The Shopping Cart server -- maybe I can't. Shopping	17:05:34
16	Cart Cookie file is performing the same task in RSS	17:05:40
17	and RQC. It is the server side copy of what's going	17:05:44
18	to be displayed to the user.	17:05:55
19	Q      So it's the same data structure and it	17:05:56
20	performs the same task of being the server side	17:05:58
21	display of what's in the Cart Object on the client	17:06:02
22	side; is that correct?	17:06:06

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1	MS. ALBERT: Thank you. Nothing further. 17:24:34
2	FURTHER EXAMINATION BY COUNSEL FOR DEFENDANT 17:24:36
3	BY MR. THOMASCH: 17:24:36
4	Q And does your report discuss the webinar as 17:24:37
5	it relates to any assertion of direct infringement? 17:24:41
6	A Without rereading the whole thing, I can't 17:24:43
7	be sure. But I don't recall writing that. 17:24:45
8	MR. THOMASCH: Thank you. 17:24:49
9	MS. ALBERT: Nothing further. 17:24:53
10	THE VIDEOGRAPHER: Going off the record at 17:24:54
11	5:24 p.m. 17:24:55
12	(Signature having not been waived, the
13	videotaped deposition of ALFRED C. WEAVER, Ph.D. was
14	concluded at 5:24 p.m.)
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ACKNOWLEDGMENT OF DEPONENT

2 I, ALFRED C. WEAVER, Ph.D., do hereby  
3 acknowledge that I have read and examined the  
4 foregoing testimony, and the same is a true, correct  
5 and complete transcription of the testimony given by  
6 me and any corrections appear on the attached Errata  
7 sheet signed by me.

10 | Page

11 | (DATE) (SIGNATURE)

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1 CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

2 I, Lee Bursten, the officer before whom the  
3 foregoing deposition was taken, do hereby certify  
4 that the foregoing transcript is a true and correct  
5 record of the testimony given; that said testimony  
6 was taken by me stenographically and thereafter  
7 reduced to typewriting under my direction; and that I  
8 am neither counsel for, related to, nor employed by  
9 any of the parties to this case and have no interest,  
10 financial or otherwise, in its outcome.

11 IN WITNESS WHEREOF, I have hereunto set my  
12 hand and affixed my notarial seal this 13th day of  
13 February, 2012.

14  
15 My commission expires June 30, 2014.



16  
17  
18  
19  
20 A handwritten signature of Lee A. Bursten in black ink.  
21 NOTARY PUBLIC IN AND FOR  
22 THE DISTRICT OF COLUMBIA